IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1639 of 1995

SMT.SHANTA DEVI
V/S
B O R

Mr. DILIP KAWADIA, for the appellant / petitioner

Mr. BL BHATI, DY.G.A., for the respondent

Date of Order : 6.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the order of the Board of Revenue, Annex.7 dated 20.4.95 and challenges the recovery claimed on account of peripheral development charges, penalty and the order to charge conversion charges at commercial rates for residential portion of the converted land.

The facts of the case are, that on 15.4.82 the petitioner filed an application for conversion of 266.66 sq. yards of agricultural land from agriculture to non-agriculture purposes, and deposited the conversion charges and penalty, calculated by himself, vide challan dated 26.3.82 amounting to Rs.2540/-. This application was processed and N.O.C. were obtained from various concerned authorities, including the Urban Improvement Trust, Senior Town Planner etc. and ultimately, the application was

allowed vide order dated 7.9.87 by the learned Collector (Conversion). Copy of this order has been produced as Annex.1. The learned Collector in this order determined the conversion charges to be leviable at commercial rates amounting to Rs.14,400/-, the construction having been raised after 20.8.81 penalty of Rs.14,400/- was levied. Then penalty for violation of Section 42 was levied. Then development charges to the extent of Rs.9600/- were also levied, compounding fees of Rs.3600/- was also levied, and peripheral development charges of Rs.1600/- were also levied. Against this order, an appeal was filed before the Revenue Appellate Authority contending inter-alia that out of the entire land, the petitioner has used only 83.33 sq. yards for commercial purposes, and therefore, commercial rate could be levied only for this portion of the land, still the conversion charges at commercial rates are being recovered for the entire land. Likewise, levy of development charges was also challenged. Other levies were also challenged.

The learned Revenue Appellate Authority partly allowed the appeal by finding that only 83.33 sq. yards of land would be used for commercial purposes, the conversion charges at commercial rates are to be levied only to that extent. To that extent the appeal was partly allowed. Aggrieved of this order, the State Government filed revision before the learned Board of Revenue, and the

learned Board of Revenue considering the definition as given in Rule 2(1)(b) of the Rajasthan Land Revenue (Allotment, Conversion & Regularisation of Agricultural Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981, found that even in cases where the premises are to be used partly for residential purposes and partly for commercial purposes, it would amount to "commercial purpose", and thus, the levy was upheld, and the order of the Revenue Appellate Authority was set aside.

Assailing the impugned judgment, it is contended by learned counsel for the petitioner, relying upon the judgment of this Court, in Nimbaheda Ramkrishna Grih Nirman Sahakari Samiti Ltd. Nimbaheda through its President Vs. State of Rajasthan & Ors., reported in 2005(4) WLC 405, that since in the present case the land was not actually converted before filing of the application for conversion, and since under Rule 8(3) the conversion application is to be disposed within a period of 90 days, no penalty could be levied against the petitioner. The other submission made is, that since the development charges are being levied for the land situated in municipal area, no peripheral development charges could be levied, as the two charges cannot be simultaneously levied. Peripheral development charges are to be levied only when the land is not situated in the municipal area. Then next submission made is, that since the part of the land only was used for commercial

purposes, the conversion charges could not be levied for the entire area at commercial rates.

Learned counsel for the respondent, on the other hand, supported the impugned judgments.

I have considered the submissions, and have gone through the Rules and also gone through the judgment in Nimbaheda Ramkrishna Grih Nirman Sahakari Samiti's case.

So far as the levy of conversion charges at commercial rates is concerned, after going through the provisions of Rule 2(b), I do not find any error in that part of the order of the learned Board of Revenue. Admittedly, one application was filed for conversion of the entire area and the entire construction proposed to be raised is one, to be used partly for residential purposes, and partly for commercial purposes, as such, the petitioner was rightly held liable for payment of conversion charges for the entire area at commercial rates.

So far levy of penalty is concerned, contention in that regard also does not have force, inasmuch as, a look at Section 90A of the Land Revenue Act would show, that according to sub-section (2) the person desiring to use such agricultural land or any part thereof for any other purpose, is to apply for requisite permission, in the

prescribed manner, to the prescribed officer, and according to sub-section (4) thereof, the person converting such land without permission is liable to ejectment, however, the State Government in lieu of such ejectment, allow the person to retain the land for the same purposes, for which it has been converted, by charging a penalty, in addition to the conversion charges. Of course as on the date of filing of the application, the land had not been converted, but then, it is not in dispute, that before the permission of conversion was granted vide Annex.1, the construction had already been raised in the year 1983. In my view, the time frame provided in Rule 8, providing for disposal of the application within 90 days does not have the effect of acceptance of the application ipso-facto, if the application is not decided within 90 days. The time frame only appears to be a guiding factor for expeditious disposal of the application, and simply because the application was not decided within 90 days, or within a reasonably short time, it does not entitle the applicant to raise the desired construction, with impunity, so far the liability of penalty is concerned. The judgment in Nimbaheda Ramkrishna Grih Nirman Sahakari Samiti's case is clearly distinguishable, it proceeds on the judgment in Shanti Chand's case, wherein the construction had not been raised till passing of the order of conversion. Therefore, this contention does not hold good.

So far the levy of peripheral charges are concerned, in my view, this contention has force, inasmuch as when the land is situated in the Municipal Area, and development charges are being taken, there is no justification for levying additional charges under the head of 'peripheral development charges', therefore, this part of the levy is set aside.

Accordingly, the writ petition is partly allowed and while setting aside the levy of peripheral development charges, the levy of other amount is upheld, and the order of the Collector, Annex.1 is restored with the modification that the petitioner shall not be liable to pay the peripheral development charges. The petitioner is directed to deposit the remaining amount within a period of four weeks from today and thereafter, the Collector may proceed further from the stage of passing of the order, Annex.1 dated 7.9.87.

(N P GUPTA),J.

/tarun/